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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/043,998	01/11/2002	Vitaliy S. Fain	FS-101	8102				
27769 AKC PATENTS 215 GROVE ST. NEWTON, MA 02466	7590 01/16/2008		<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">SMITS, TALIVALDIS IVARS</td></tr></table>		EXAMINER		SMITS, TALIVALDIS IVARS	
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			<table border="1"><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>01/16/2008</td><td>PAPER</td></tr></table>	MAIL DATE	DELIVERY MODE	01/16/2008	PAPER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/043,998

Applicant(s)

FAIN ET AL.

Examiner

Talivaldis Ivars Smits

Art Unit

2626

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

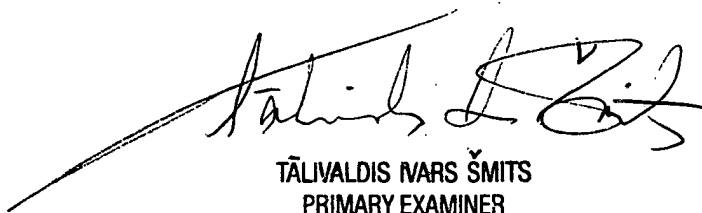
REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments are not persuasive.

To begin with (per Remarks p. 15), the Ju patent filing date (1/31/2001) precedes the priority date for the instant application (3/12/2001), and thus can be properly used in a 103(a) rejection. For "Subject matter which is developed by another person which qualifies as prior art only under 35 U.S.C. 102(e),... may be used as prior art under 35 U.S.C. 103 against a claimed invention unless the entire rights to the subject matter and the claimed invention were commonly owned by the same person or subject to an obligation of assignment to the same person at the time the claimed invention was made" (MPEP section 706).

As for the argument (Remarks, p. 16) that "There is no reference to the word 'meaning' in this quote by Ju et al.", Ju et al. in the section quoted address the case of "minimizing ambiguity when homonyms and similar sounding speech having different meanings are spoken" (col. 2, lines 57-58). Since the limitation under discussion in claims 1, 9, 17, 18, and 19 recites "at least one of" a list of options, Ju includes the recited "words or phrases having the same spellings and different meanings", based on the Merriam-Webster Online Dictionary definitions of "homonym" (attached herewith), this Dictionary being acknowledged as authoritative by applicant citing its definition of "meaning". Applicant's argument that different spellings do not necessarily imply different meanings, while true, is therefore irrelevant, and in any case different spellings for similarly-sounding words generally indicate that the words also have different meanings.



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homonym

One entry found.

homonym

Main Entry: **hom·onym**

Pronunciation: \ˈhä-mə-,nim, ˈhō-\

Function: *noun*

Etymology: Latin *homonymum*, from Greek *homōnymon*, from neuter of *homōnymos*

Date: 1697

1 a : HOMOPHONE b : HOMOGRAPH c : one of two or more words spelled and pronounced alike but different in meaning (as the noun *quail* and the verb *quail*)

2 : NAMESAKE

3 : a taxonomic designation rejected as invalid because the identical term has been used to designate another group of the same rank — compare SYNONYM

— **hom·onym·ic** \ˈhä-mə-ˈni-mik, ˈhō-\ *adjective*

Learn more about "homonym" and related topics at Britannica.com

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